Division Bench

(3)

(3)

IN THE HIGH COURT OF (CHHATTISGARH) AT BILASPUR

MISC. APPEAL (C) No. 210 /2006.

APPELLANT CLAIMANT : Mahendra Uike, S/o. Late Pnancham Uike, aged about 51 years, R/o. Chhotelal Dewangan, Kaystha Para, Ward No.5, Dr. Nathu Prasad Tiwari, Behind by X-ray Clinic Durg, Thana- Mohan Nagar, Tahsil and Distt. Durg, (C. G.)

V E R S U S

RESPONDENTS :1) Anil Kumar Sahu, S/o. Anand Ram Sahu, aged about 35 years, DRIVER

2) Anand Ram Sahu, S/o. Punou Ram Sahu, aged about 60 years,

Both R/o. Qr. No. F/32, C. G. Rajya Vidyut Mandal Colony Bhilai-3, Tahsil and District Durg (C. G.)

3) The Branch Manager, The New India Insurance Company Ltd. Power House, Oppo. Project Automobiles, Bhilai, P. S. Chhawani, Tahsil and Distt. Durg (C. G.)

INSURER

P.R. No. 3391/06
Presented by Shri Rajmangeet Kaushik
date 21/8/06

MEMO OF MISC. APPEAL (C) U/S 173 OF THE MOTOR VEHICLE ACT 1988.

(45)

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : **Hon'ble Shri H.L. Dattu, CJ &**
Hon'ble Shri V.K. Shrivastava, J

MISC. APPEAL (C) NO. 210 OF 2007

APPELLANT: Mahendra Uike

Versus

RESPONDENTS: Anil Kumar Sahu and others.

Present : Shri Jitendra Gupta, counsel for the appellant.
None for respondents.

ORAL ORDER

(Passed on 15th February, 2007)

The following oral order of the Court was passed by **Vijay Kumar Shrivastava, J.**

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth, "the Act, 1988") preferred by claimant/appellant for enhancement of the compensation against the award dated 31/07/2006 passed by XI th Additional Motor Accident Claims Tribunal, (F.T.C) Durg (henceforth, "the Tribunal") in Claim Case No. 40/2006, whereby he has been awarded compensation of Rs.31,500/-.

2) The factual matrix of the case, in brief, is that on 29/03/2004 when the appellant/claimant along with other persons was coming back from Kokha to Durg, on Marshal Jeep bearing No, CG/07/ZD/1325 (for short "the vehicle"), driver of the vehicle i.e. respondent No.1 driving the vehicle in a rash and negligent manner dashed it against a tree, resultantly appellant sustained injuries. Appellant filed an application under Section 166 of the Act, 1988 for grant of compensation against the respondents

who are driver, owner and insurer of the vehicle. Respondents No.1 and 2 remained ex parte whereas, respondent No.3 contested the claim.

3) Learned Tribunal after appreciating the evidence passed an award in favour of the appellant allowing compensation as below :-

a)	Disability	--	20,000/-
b)	Pains & sufferings	--	10,000/-
c)	Medical expenses	--	1,000/-
d)	Diet	--	500/-
	Total	--	31,500/-

4) Learned counsel for the appellant contended that the Tribunal only allowed Rs.31,500/- towards compensation and that is not a just and proper compensation.

5) Appellant did not examine medical officer to support his injuries. No disability certificate has been adduced by the claimant, even in absence of medical evidence; the compensation has been awarded by the Tribunal on various heads as shown above. It appears that mercy played a vital role to impress the Tribunal which constrained the Tribunal to award above compensation even in absence of legal evidence to support disability, pains & sufferings.

6) In view of the above, the award can not be categorized to be unjust or improper. Appeal being devoid of merits, is liable to be dismissed and is accordingly dismissed.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Chief Justice

Raju